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Attorney for Defendants  
 GREEN DAY TOURING, INC.,  
 GREEN DAY, INC., BILLIE JOE  
 ARMSTRONG, FRANK EDWIN  
 WRIGHT, III, MICHAEL PRITCHARD and  
 WARNER BROS. RECORDS INC.

**UNITED STATES DISTRICT COURT**  
**CENTRAL DISTRICT OF CALIFORNIA**  
**WESTERN DIVISION**

DERECK SELTZER,

Plaintiff,

vs.

GREEN DAY, INC., a corporation;  
 GREEN DAY TOURING, INC., a  
 corporation; GREEN DAY, a partnership;  
 GREEN DAY, a business entity (form  
 unknown); BILLIE JOE ARMSTRONG,  
 an individual; FRANK EDWIN WRIGHT,  
 III, professionally known as TRE COOL,  
 an individual; MICHAEL PRITCHARD  
 professionally known as MIKE DIRNT,  
 an individual; WARNER BROS.  
 RECORDS INC., a corporation; INFECT  
 PRODUCTIONS, a partnership; INFECT  
 PRODUCTIONS, a business entity (form  
 unknown); ROGER STAUB, an  
 individual; and PERFORMANCE  
 ENVIRONMENT DESIGN, a business  
 entity (form unknown),

Defendants.

Case No. CV 10-02103 PSG (PLAx)

DECLARATION OF ROGER STAUB  
 IN SUPPORT OF MOTION FOR  
 SUMMARY JUDGMENT OR, IN THE  
 ALTERNATIVE, PARTIAL  
 SUMMARY JUDGMENT

Date: June 27, 2011  
 Time: 1:30 p.m.

Courtroom of the Honorable  
 Philip S. Gutierrez  
 United States District Judge

**TABLE OF EXHIBITS**

- EXHIBIT 9:** Roger Staub's 2008 photograph of wall at Sunset Boulevard and Gardner Avenue
- EXHIBIT 10:** Composite image Roger Staub created using a portion of his 2008 photograph
- EXHIBIT 11:** Screen shot of video backdrop Roger Staub created for performances of *East Jesus Nowhere*
- EXHIBIT 12:** Portions of Scream Icon image visible in composite image Roger Staub created
- EXHIBIT 13:** Portions of Scream Icon image not visible in composite image Roger Staub created
- EXHIBIT 14:** September 25, 2009 e-mail chain

**DECLARATION OF ROGER STAUB**

I, Roger Staub, declare and state:

1. I am over 18 years old and I have personal knowledge of the following facts and I could competently testify to these facts if called upon to do so.

2. I am a set lighting and video designer and was born and raised in Switzerland. English is my second language.

3. After graduating secondary school, I apprenticed as a graphic designer from 1989 to 1993. After working as a graphic designer from 1994 to 1996, I worked freelance, including approximately 25 to 30 jobs designing sets or other artwork for theaters in Switzerland. In addition, I collaborated with other artists on art projects, including at least one video work that was exhibited in a gallery.

4. I am also a musician and played in a band in Switzerland. In approximately 2000 I begin designing the lighting and sometimes the sets for the band I played in and for other local bands. In 2003, I was asked to create a set design for concert performances by Züri West, which is one of Switzerland's most well-known bands. I prepared the set design and served as the set- and lighting designer for Züri West's 2003-2004 tour in Switzerland, which included 70 to 80 concert performances. Since then, I have designed the lighting and sometimes the sets for concert performances by other musical artists, including the Lovebugs and Mitch Gerber (both of which are prominent Swiss bands), and I designed and created video content for artists such as Eminem, Jay-Z, Soundgarden, John Legend & The Roots, Bon Jovi, Interpol, Beyonce, Maxwell and Ludacris, and for television shows such as the BET Hip Hop Awards, the Grammys, the American Music Awards and the MTV Music Awards.

5. As a visual designer for concert performances, I come up with and implement ideas for visual elements for the staging of the performances. These visual elements can include not only lighting and static artwork, such as an image displayed before or behind a performance, but also video clips displayed before or behind a

1 performance. Sometimes I prepare the artwork and video clips myself or in  
2 collaboration with other artists. Sometimes freelance artists are engaged to prepare  
3 artwork or video for my review and inclusion in the concert staging. The artwork and  
4 video generally is in electronic form, consisting of computer files, which I can revise  
5 and create. For example, in my work I often will take a digital photograph and revise  
6 that digital image or portions of it, using programs such as Aperture and Adobe  
7 Photoshop. As another example, in my work I often prepare digital video which I may  
8 revise using Adobe AfterEffects, FinalCut Pro and Adobe Illustrator.

9 6. In 2008 I moved from Switzerland to Los Angeles, California, where I  
10 have lived since then.

11 7. I have long been interested in graffiti and street art, such as posters and  
12 stencils, which are often very interesting visually. In 2008 and shortly after moving  
13 here, I saw that a brick building at the corner of Sunset Boulevard and Gardner Avenue  
14 in Los Angeles has what appears to be a sealed-off door that was covered in posters  
15 and graffiti. That sealed-off door and its posters and graffiti was on the side of the  
16 building on Gardner Avenue and next to the sidewalk and street. The door, posters and  
17 graffiti were, of course, visible from the sidewalk and street. The posters were  
18 weathered and some were torn or peeling, and placed over one another with graffiti or  
19 pieces of graffiti visible on top of the posters. There were at least 22 posters or  
20 portions of posters visible on the sealed-off door. There were no copyright notices on  
21 any of the posters.

22 8. I found the image of that sealed-off door with posters and graffiti at  
23 Sunset and Gardner very interesting and I took a digital photograph of it in 2008.  
24 When I took that photograph, I was standing on the sidewalk in front of the sealed-off  
25 door. I composed the photograph myself. Shortly after taking the photograph, I  
26 downloaded it to my own personal library of photographs I have taken over the years.  
27 Attached to this Declaration as Exhibit 9 is a true and correct copy of the photograph I

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1 took in 2008 of the sealed-off door covered in posters and graffiti at Sunset and  
2 Gardner.

3 9. In approximately May 2009 and at the request of Justin Colley of  
4 Performance Environment Design Group (“PEDG”), I assisted in the design of the  
5 staging for Green Day’s Oakland, California performances in May 2009, when their  
6 album *21st Century Breakdown* was released.

7 10. In approximately June 2009, Justin Colley asked me, and I agreed, to  
8 assist in the design of stage elements for Green Day’s concert performances in their  
9 2009-2010 world tour. Specifically, I came up with and helped implement ideas for  
10 the video looks for Green Day’s concert performances of their various songs. After  
11 listening to the songs on the *21st Century Breakdown* album and seeing Green Day’s  
12 rehearsals for their performances in May 2009 and the *21st Century Breakdown* album  
13 artwork, I prepared a “mood board” of images to try to convey some basic ideas for  
14 potential video looks for each performance. I then fleshed out my basic ideas by  
15 preparing, or commissioning the preparation of, various images and video clips. I also  
16 included artwork from the *21st Century Breakdown* album. My goal in creating the  
17 video looks for each song was to visually represent the mood, tone or themes of the  
18 song. I also sought to be consistent with the album artwork, which includes images of  
19 brick walls with graffiti and stencils.

20 11. Ultimately, on my own or working with other artists I commissioned, I  
21 prepared separate video backdrops for each of approximately 32 Green Day songs for  
22 the Green Day 2009-2010 concert tour. I was paid a total of \$32,000 for creating the  
23 32 video backdrops, or \$1,000 per video backdrop.

24 12. One of the songs on Green Day’s *21st Century Breakdown* album is the  
25 song *East Jesus Nowhere*. Working with another artist I had commissioned, I prepared  
26 a video backdrop for Green Day’s performance of that song. Before preparing that  
27 video backdrop, I listened to the song *East Jesus Nowhere* many times. I did so to help  
28 me in my goal of visually representing the mood, tone and themes of *East Jesus*

1 *Nowhere*. In my view, that song is about the hypocrisy of some religious people who  
2 preach one thing but act otherwise. I also believe the song is about the violence that is  
3 done in the name of religion.

4 13. The video backdrop I prepared for *East Jesus Nowhere* has hundreds of  
5 different graphical elements. There is a brick wall, with doors and windows, depicting  
6 the exterior of an urban building adjacent to a sidewalk or alley. The video lasts 4  
7 minutes and 13 seconds and is time lapse over three nights and days, starting in  
8 darkness, with lights on over a door and portions of the wall, then moving to daylight,  
9 back to night, *etc.* In the night portions of the video, the headlights of passing cars as  
10 well as the emergency lights of police cars or ambulances play against the wall.  
11 During the video, people appear and graffiti and street art appear on the wall and  
12 change, all at a speeded-up rate. The street art includes stencils and posters, including  
13 religious images such as Jesus Christ. For example, one image of Jesus Christ is  
14 posted on the wall and, in time lapse, his eyes are spray-painted over and a grenade and  
15 bullets are added. As another example, a stenciled image of Jesus Christ appears on  
16 the wall and then, in time lapse, tears are added. The street art also includes images of  
17 men with weapons and two men fighting, one with a cross and the other with a crescent  
18 moon and star. There are also various visual effects, such as slashing lines that run  
19 across the wall from time to time.

20 14. I was the creative director of the video backdrop for *East Jesus Nowhere*  
21 and, for example, I came up with the concept of the time lapse graffiti wall, and I also  
22 personally created some of the images that appear in the *East Jesus Nowhere* video  
23 backdrop. The other images included in the *East Jesus Nowhere* video backdrop, such  
24 as original artwork, video elements and illustrations, were either provided by artists I  
25 commissioned for the project, from the *21st Century Breakdown* album or stock  
26 footage elements I bought.

27 15. One of the images I created for the *East Jesus Nowhere* video backdrop is  
28 a composite image consisting of a large red cross that appears spray-painted over a

1 piece of street art depicting a portion of a face grimacing or possibly screaming, and  
2 posted on a black brick wall. I created that composite image to visually associate  
3 organized religion, symbolized by a blood red cross, with anguish or suffering.  
4 Attached to this Declaration as Exhibit 10 is a true and correct copy of this composite  
5 image. This new composite image and the association of religion and suffering was  
6 part of my effort to create set design artwork that visually represented the mood, tone  
7 and themes of the song *East Jesus Nowhere*.

8 16. To create this composite image of a red cross and street art depicting a  
9 face in anguish, I included a portion of my 2008 photograph (Exhibit 9) of the sealed-  
10 off door covered with graffiti and posters at Sunset and Gardner. The portion of my  
11 2008 photograph that I used in creating the composite image depicts a weathered  
12 poster, with its top right corner torn off and its left corner peeling off the wall, marked  
13 with graffiti, showing a portion of a face with an open mouth that appears to be  
14 grimacing or possibly screaming. To create this composite image, I digitally removed  
15 the portion of my photograph depicting this torn poster, I changed the contrast and  
16 color of that portion of my photograph using Adobe Photoshop and I masked out a part  
17 of that portion of my photograph. I placed that modified portion of my photograph  
18 over the image of a dark black brick wall background. To complete the composite  
19 image I created and further my visual representation of the mood, tone and theme of  
20 *East Jesus Nowhere*, I then added the prominent image of a broad, red cross that  
21 appears to have been spray-painted over the modified portion of my photograph. The  
22 resulting composite image I created of a large red cross "spray-painted" over a torn and  
23 weathered piece of street art visually and dramatically associates organized religion --  
24 symbolized by the prominent red cross -- with anguish or suffering.

25 17. I was unaware of any restrictions or limitations that prevented me from  
26 using portions of my 2008 photograph of graffiti-marked street art in creating the video  
27 backdrop. As stated above, there was no copyright notice on the posters. The posters

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1 were posted on top of each other, marked with graffiti and part of what I saw, from the  
2 sidewalk, when I took my photograph.

3 18. The video backdrop for *East Jesus Nowhere* was, like the video backdrops  
4 for the other songs, displayed using large LED screens and a projector. The brick wall  
5 and its multiple, changing images were displayed using the LED screens, while the  
6 composite image I created of the red cross and a modified portion of my 2008  
7 photograph also over the brick wall, was projected. Although displayed with different  
8 equipment using different computer files, they were displayed simultaneously to create a  
9 single video playing behind the band. Submitted with this Declaration as Exhibit B is a  
10 DVD that includes (1) the video backdrop for *East Jesus Nowhere* combining both the  
11 images displayed on the LED screens and projected, and (2) that same video backdrop  
12 with a recording of *East Jesus Nowhere* playing. As an example of the many images  
13 that appear in the video backdrop, attached to this Declaration as Exhibit 11 is a true  
14 and correct copy of a single screen shot of images that appear in the video backdrop.

15 19. To my knowledge, the composite image I created of a red cross “spray-  
16 painted” over a torn piece of street art has only been used in connection with Green  
17 Day’s *East Jesus Nowhere* performances. Copies of that composite image, alone, have  
18 never been sold or distributed to the public.

19 20. In September 2009 I reformatted the *East Jesus Nowhere* video backdrop  
20 for display during Green Day’s performance of *East Jesus Nowhere* during the  
21 September 13, 2009 MTV Video Music Awards. Submitted with this Declaration as  
22 DVD Exhibit C is a true and correct copy of MTV’s broadcast of Green Day’s  
23 performance of *East Jesus Nowhere* at the MTV Video Music Awards. As the Court  
24 will see, the composite image I created is visible briefly, in the distance, toward the  
25 very end of the performance.

26 21. I have seen a copy of Mr. Seltzer’s “Scream Icon” image produced in this  
27 action and which he testified is his copyrighted image. Mr. Seltzer’s “Scream Icon” image  
28 differs in many respects from the composite image I created for the video backdrop for *East*



1 *Jesus Nowhere*. For example, the street art image in my composite image has a large red  
2 cross superimposed over it, has graffiti on it and is missing the top right corner, and its  
3 top left corner *is peeling over* and, as a result, also is not visible.

4 22. To demonstrate to the Court the portions of the "Scream Icon" image that  
5 do not appear in the composite image I created, attached to this Declaration as Exhibit  
6 12 is a copy of the "Scream Icon" image Mr. Seltzer produced in this action, from  
7 which I have masked out the portions that are not visible in the composite image I  
8 created. The resulting Exhibit leaves only the portions of the "Scream Icon" image  
9 that can be seen (with different contrast and color than the torn poster I photographed  
10 in 2008) in the composite image I created. Also, attached to this Declaration as Exhibit  
11 13 is a copy of the "Scream Icon" image Mr. Seltzer in this action, from which I have  
12 masked out the portions that are visible in the composite image I created. This Exhibit  
13 shows the portions of the "Scream Icon" image that do not appear in the composite  
14 image I created.

15 23. Attached as Exhibit 14 is a true and correct copy of a chain of e-mails I  
16 received on or about September 25, 2009.

17 I declare under penalty of perjury that the foregoing is true and correct.  
18 Executed on May 8th, 2011, in Los Angeles County, California.

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ROGER STAUB